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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

ARTHUR K. GARDINER ET AL.,
Petitioners for Certiorari,

against

THE UNITED STATES.

No. 1340

BRIEF FOR THE PETITIONERS.

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Supreme Court of the United States.

OCTOBER TERM, 1892.

No.

ARTHUR K. GARDINER ET AL.,
Petitioners for *certiorari*,

AGAINST

THE UNITED STATES.

BRIEF FOR PETITIONERS.

This petition is prepared and presented at the earliest day possible after the entry of judgment in favor of the United states in the Circuit Court of Appeals for the second circuit in this cause.

Notice was given to the United States of the purpose to file this petition, as appears by the assent of the Solicitor General to our selection of the parts of the record necessary to be printed.

Statement.

Saturday, October 4, 1890, A. K. Gardiner & Brother imported fifty bags of glue, per steamer 'City of Chicago,' arriving at the port of New York on that day. (Rec. 10, fol. 29, 1st.)

The master entered the ship that day and delivered at the custom-house the usual manifest of her cargo, of

which this glue was an item ; but no separate entry, by the consignees, of this particular invoice of merchandise was made until October 6th, solely because the custom-house was closed at its ordinary Saturday-hour of three on October fourth. That it was exceptionally reopened about an hour later was a fact not known to these importers until the following week. (Sol. 29.)

The " General Order " permitting the unlading of the cargo, issued Oct. 4, 1890. (Rec. fols. 41, 42, pp. 16, 17.)

As this glue arrived Oct. 4, 1890, its importers claimed to enter it at the 20% *ad. val.* imposed by the act of March 3, 1893, c. 121, Sec. 2502, Sched. A. (22 Stats., 491 bot.) ; but, because there was no entry of it other than the master's entering the ship, prior to Oct. 6, the collector exacted 1½ cents a pound, under par. 27 of the act of Oct. 1, 1890, c. 1244. (26 Stats., 568.)

Statutes.

ACT OF 1890.

On and after the sixth of October, 1890, unless otherwise specially provided for in this act, there shall be levied, collected and paid upon all articles imported from foreign countries and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs, respectively prescribed, namely :

SCHEDULE A.—CHEMICALS, OILS AND PAINTS . . . . . .

27. Gelatine, *glue* . . . . . one and one-half cents per pound (26 Stats., 567–8.)

Sec. 50. That on and after *the day when this act shall go into effect* all goods, wares, and merchandise PREVIOUSLY imported, for which no entry has been made, ... shall be subjected to no other duty upon the entry or the withdrawal thereof than if the same were imported respectively after that day . . . . . (*Id.*, 624 top.)

APPROVED OCT 1, 1890. *(Id. 624.)*

ACT OF 1883.

Sec. 6. That on and after the first day of July, 1883, the following sections shall constitute and be a substitute for Title 33 of the Rev'd Stats. of the U. S. :—

Sec. 2502. There shall be levied, collected and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules, respectively prescribed, namely :

SCHEDULE A.

Chemical Products.

Glue, 20% *ad valorem.* (22 *Stats.*, 491, bot.)

POINTS.

I.

Revisory power under act of 1891.

" In any such case as is hereinbefore made final in the Circuit Court of Appeals, it shall be competent for the Supreme Court to require, by *certiorari or otherwise*, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." (26 Stats. 827.)

The power conferred by this statute is not *simply* revisory ; but revisory that it may exercise a *supervisory* authority over inferior Federal tribunals ; analogous to that which the Circuit Courts had over bankruptcy proceedings in the District Courts ; with *more* than the guardianship exercised by the Kings Bench over lower courts.

The words " *or otherwise* " were inserted, *ex magna cautela*, to emphasize this relation, and indicate that a motion for the intervention of this court would suffice

to set this machinery into operation; also, that even where a writ of *certiorari* (or application therefor) is employed, no narrow technicality limits the *authority* of this court; though, of course, its wise discretion will circumscribe the exertion of it to questions of importance.

Formerly, the writ of *certiorari* was not *specified* in any statute giving authority to this court, but was issuable when 'necessary for the exercise of *their* respective jurisdictions' (R. S. sec. 716) by superior courts—not to ascertain whether or not *some other court* had properly exercised its jurisdiction.

So long as (and *because*) this condition of legislation existed, it *was* true that there *was*

"No analogy between the power given by the Constitution and law of the United States to the Supreme Court and the other inferior courts of the United States and to the judges of them to issue such processes and the prerogative power by which it is done in England. (*Ex. p.* Vallandigham, 1 Wallace, 249.)"

But the whole scope and force of this act of 1891, as the words 'or otherwise' render still more apparent, is to provide for and sanction that prerogative *supervisory* use of the writ well known to English law and to the administration of justice in many of the states.

In England and in some States, the writ issues to remove an indictment or civil cause from an inferior to a superior court *for trial;* and in many States it is "but a substitute for an appeal." (Hurd v. Tombes, 7 Howard, (Miss.,) 234; Com. v. Simpson, 2 Grant's Cas., 438; Dougan v. Arnold, 4 Dev., (Law), 101; Burk v. Davidson, 5 Humph., 425; Perkins v. Hadley, 4 Hayward, Tenn.), 143; Kearney v. Jackson, 1 Yerg., 294.)

Of course, this Court would not be imagined to employ it for the first purpose; but, equally of course, it was intended to subserve the second, wherever this court sees sufficient cause to direct its issue.

With the before-mentioned immaterial exception of

causes certioraried for trial, whenever the writ issues it is for one of two purposes, viz.; either to exercise the supervisory power of the court issuing it over that to which it runs; or else as auxiliary to some other process by which the record of the latter in a given case is brought before the former upon suggestion there made of a diminution or defect therein. (Dunlap's Forms, 4th ed., 239, 240.) It is in the latter instance only that its issue becomes "necessary for the exercise of the jurisdiction" of the issuing court over the cause previously brought within that jurisdiction; and this was its only use here formerly; but now the latter is added, and made its predominant use. Indeed, the carefully added provision, that this Court may proceed to do aught it could have heretofore done upon writ of error or appeal, extends the supervisory authority beyond that exercised by means of this writ, at common law.

At common law the writ issued from a superior to an inferior tribunal for both these purposes, by virtue of the right of the former to supervise and control procedure in the latter and to restrain it within its proper jurisdiction in all its proceedings, as well as for the information and guidance of the superior court in finally disposing of the cause upon its merits. As to the first of these uses, it is said in Birdsall *v.* Philips, (17 Wend., 468,) "This writ is but an emanation from the general supervisory duty of the Supreme Court to restrain the action of all inferior magistrates within their legal grasp." (1 Monell's Practice, 264, *et seq.*) "The supreme court [of Penn.] thus having no power to review the merits, can only *under its general power to supervise the proceedings of inferior tribunals* bring up the record for this special purpose." (*In re* Sheppard, 77 Penn., 301.)

We have instanced the circuit court's supervision of bankruptcy proceedings. Of this, in a case arising in his circuit, CHASE, C. J., said: "The better and, indeed, as it seems to me, the only construction which gives due effect to all parts of the act relating to revis-

ory jurisdiction seems to be that which, on the one hand, excludes from the category of general superintendence and jurisdiction of the circuit court the appellate jurisdiction defined by the eighth section, and, on the other, brings within the category all decisions of the district court or of the district judge at chambers, which cannot be reviewed upon appeal or writ of error under the provisions of that section. *The exercise of the general jurisdiction is not placed by the act under specific regulations and restrictions*, like the proceeding by appeal or writ of error." *In re* Alexander, (2 Am. L. T. Bank. Rep., 84, and 3 Bank. Reg., 6; Hall v. Allen, 12 Wallace, 454; Morgan v. Thornhill, 11 Wallace, 80; Gen. Stats. of Mass., c. 118, § 16; Palmer v. Dayton, 4 Cush., 270; Thompson v. Thompson, *Id.*, 127; Harlow v. Tufts, *Id.*, 452; Cheshire Iron Co. v. Gray, 3 Gray, 533; Bump on Bankruptcy, 265, 266.)

The supervisory power, like the appellate, is entirely the creature of statute, so far as this Court is concerned.

Judge COOLEY observes that "Where the writ is given by statute, a broader scope may be, and usually is, given to the writ than it has at common law." (Cooley on Tax., 753.)

Washington v. Parker, 60 Ala. 447.
McAllilley v. Horton, 75 *Id.* 491.
Miller v. Trustees, 88 Ills. 26.
Hyslop v. Finch, 99 *Id.* 171.

A couple of cases may be added as indicating the extent to which this supervisory power is practically carried; and with reference to which practice Congress enacts that it may be here exercised by *certiorari* 'or otherwise.'

Thompson v. Sch. Dist. 25 Mich., 484.
State v. Dodge, 56 Wis. 79.

"And so it is competent for this Court, by *certiorari*, to direct *any* case to be certified" which is not appealable, or reviewable by writ of error.

Lau Ou Bew, 144 U. S. 58 mid.

II.

Necessity for its exercise.

The power of this court to review the determinations of the circuit courts of appeals is necessary to preserve harmony of decisions among them; but it is equally needed to conform the action of (and the construction of federal laws by) these courts to that of this court.

It is this latter aspect that especially calls for the interposition of this court in the present cause.

We believe it susceptible of demonstration that the decision of the court below in this case, as to the date when a federal statute—or certain of its provisions—takes effect is diametrically opposed to the decision of this court upon a very similar state of facts in Robertson vs. Bradbury, 132 U. S. 491; in which a ruling by the same learned circuit judge who writes the opinion in this case was reversed. It seems to us that, though overruled, he "is of his first opinion still," and that our case was controlled thereby, contrary to the law as announced by this court in the Robertson case, 132 U. S. 491.

We feel equally sure that there has also been a mistaken construction placed by the Circuit Court of Appeals upon the Trinity Church case (143 U. S., 457), and a disregard of earlier decisions in this and the Circuit Courts.

It will be the purpose of the residue of this brief to show this disagreement of the present with former decisions; adding a few words of comment upon the reasons assigned for the decision of which we complain.

III.

Importation.

Tariff legislation, in its successive enactments, constitutes a *system* in which no single statute is assumed to make any further innovation than its terms expressly and imperatively require.

Saxonville vs. Russell, 116 U. S. 21.

It was long ago decided, and has been uniformly held, that an importation is complete, and the right of the United States to (then-existing) duties accrues, when the *ship* brings the dutiable goods into *her* port of entry.

U. S. v. Vowell, 5 Cr. *368.
Arnold, 1 Gall, 344; 9 Cr. 119.
Prince v. U. S., 2 Gall. 207–8.

And they accrue without entry. STORY, J. "I have no doubt that an importation may be *complete* without entry. 1 Gall., 354, top.

U. S. vs. Lindsay, *Ib.* 366.
Perots vs. U. S., Pet. C. C. 257.
U. S. vs. Dodge, Deady, 126.

Immediately, the duties become a personal debt of the importer.

Meredith vs. U. S. 13 Pet. *494.
U. S. vs. Lyman, 1 Gall. 366.

As it is the arrival of the *vessel* that fixes the cargo with duty, our protest claims her entry and manifest to be an entry of the goods she brings, and declares at the custom house, and is "permitted" to unlade.

The record (fol.) shows the permit issued Oct. 4.

IV.

Section 50.

The collector based his assessment of our goods, at a rate non-existent when they were imported, upon his reading of section 50 of this act of Oct. 1st, 1890. (26 Stats. 624 top; *ante* p. 2.)

This section does not in terms prescribe any duty; although nothing but express declaration of law can impose one; and if there be an omitted article, it is exempt.

Liverpool Hero, 2 Gall. [188.]

A customs impost is argued into it constructively. This the learned judge below did not think should be done. (Rec. 18.)

Whether its language was meant to affect the rates prescribed in the preceding provisions or not, it certainly does not touch our importation of Oct. 4, 1890.

Unless otherwise expressly declared, an act goes into effect upon the day it is signed by the president; and, if important, the hour of signing may be ascertained.

Matthews v. Kane, 7 Wh., 211.
Louisv. v. Svgs. Bk. 104 U. S. 479.

The date of the approval of ch. 1244, "An act to reduce the revenue," etc., was October 1, 1890. (26 Stats. 624.)

Upon that day the statute itself went into effect. If any of its provisions were to become subsequently operative, this was because the act approved Oct. 1, 1890, declared the law to be that, upon and after a later day named, such provisions should be effective in their operations upon persons, property and rights; and those portions of the act to which no later date was *specifically* assigned became imperative in their man-

dates, to citizen and official, *eo instanti*, by the affixing of the President's signature.

Gardner v. Collr. 6 Wall. 506.
Robertson v. Bradbury, 132 U.S., 491, overruling Babson v. Robertson, 34 F. R. 203.
Tomlinson v. Bullock, 4 Q. B. Div. 230.

"*The law itself went into immediate effect*, although various provisions of it, contained in other sections, were postponed to take effect," some July 1 and some May 1. (132 U. S. 493.)

Like its immediate predecessor, and probably all earlier tariffs, this act of Oct. 1, 1890, contained sections and provisions designed to have immediate effect. For example, the very next section (51) "hereby" prohibiting convict-labor goods from entry into the United States (26 Stats. 624); Sec. 52, as to the value of foreign coin, to be proclaimed "*immediately after the passage of this act*" etc. *(Ib.);* and Sec. 54. *(Ib.)*. Earlier sections may be noted. By Sec. 8, all lumber, etc., to build vessels here upon foreign account, etc., "*after the passage of this act*, may be imported in bond" (*Id.* 613); Secs. 9, 11, 12, etc. Sec. 15, American-owned logs on the St. John river "*now*" (*i. e.* Oct. 1, 1890) admitted free shall continue to be so admitted. So, of many following sections; see the "internal-revenue" sections, 27 et seq. (*Id.* 618).

Certainly, this *act* became effective, as law—went into effect—October 1, 1890. (132 U. S. 493.)

Distinctly and categorically, is the operation of Sec. 50—whatever it may be—confined to goods "*previously* imported;" *i. e.*, before Oct. 1, 1890; and ours arrived, were imported, Oct. 4, 1890. On and after *that* day (Oct. 1) goods "previously imported" shall be subjected, etc.

The specified rates of duty were to be assessed October 6. That was a day certain. The day the act should go into effect was uncertain; dependent upon

the time the President might take before signing. Had it been intended for Sec. 50 to make date of entry, instead of importation, determine the rate to be paid, the fixed day (Oct. 6) would have been mentioned, and not an uncertain day.

The language of Sec. 50 is unambiguous and its meaning is plain, so far as the extent and limitation of its operation is concerned.

There is nothing to show that Congress intended any other or different meaning to be attached to its provisions than is clearly expressed in the language *of the section*, as to the importations it was to operate upon. Certainly where the language is plain and explicit there is no room for construction.

Authority is scarcely necessary for this proposition.

We propose to apply it to Section 50; and to its first line, first;—" on and after the day when THIS ACT shall go into effect," etc.

There is no ambiguity about *these* words; their meaning is plain enough; they refer to the date of approval.

Everybody designates this statute as the act of Oct. 1, 1890; according to the *fact*. It *is* the act of Oct. 1, 1890. All the compilers who have republished it in popular form, with annotations, entitle it " the act of Oct. 1, 1890;" because that is the day it became law.

" The *law itself* went into immediate effect; although, it is true, various *provisions of it*, contained in *other* sections, were postponed to take effect, some on the first of July and some on the first of May. But *where such postponement was intended it was expressed*, and *only referred to the parts that were so postponed*."
Robertson vs. Bradbury, 132 U. S., 493.

The meaning of 'previously imported' is indisputable, after the date is fixed.

The section prescribes that, on and after the day upon which the act goes into effect (Oct. 1) all goods

previously imported which either (1) have not been entered, or (2) entered without payment of duty and under bond, (3) for which no permit of delivery has been *issued*, shall be subject to no other duty, upon entry or withdrawal, that if imported after *that* day ; *Provided*, that any import deposited *in bond* prior to *Oct. 1*, 1890, may be withdrawn prior to Feb. 1, 1891, at the old rates of duty, levied upon the weight at the date of withdrawal.

There is nothing here to fix any other date upon the operation of this provision than that expressly declared in its first line. On the contrary, it establishes Oct. 1, 1890, as the day upon which bonded goods lose the right of remaining in store four months, without any change from the rates of 1883 attaching ; but, if an importer preferred the 1890 duties, he could postpond withdrawal until Feb. 1, 1891.

Certainly, any goods in bond Oct. 3, could have been withdrawn for consumption at the old rates on that day ; but could not be withdrawn after Oct. 6 at the old rate, *unless* in bond prior to Oct. 1, in which case they might be before Feb. 1, 1891. Thus, by this very section, Oct. 1 is made the date for determining the duty upon *certain* goods, arbitrarily selected.

We lay no stress upon the accident of this assigned date being that of the approval ;—we *do* that it is *not* October 6.

Innumerable citations to this point might be added ; like this;—

"Whatever may be the intention of the legislature, if it be not declared by apt words, no court can be blamed for mistaking it, and giving to the words used their ordinary signification, however wide such interpretation may be from the object which may have been in view."

Fisher vs. Harnden, 1 Paine, 61 bot.

But it will be better to notice one or two of the first cases cited by the appellant in the Court below. The

very first was one where a lienor, using due diligence, could not press his claim to a judgment within one year after filing notice, and was held hereby to have lost his lien; the court saying ;—

" In the present case, the statute is obviously defective in not providing for the contingency " above stated; but "all statutes must have a construction according to the language employed, and where no ambiguity exists, courts cannot correct supposed defects."

Benton vs. Wickshire, 54 N. Y., 228–9.

Citing the above, the N. Y. Court of Appeals said in 1888;—

" If we were at liberty to inquire into the circumstances under which this act was passed, and its connection with other legislation of the same period, we might conjecture that the legislature designed it to apply to the Broadway Surface R. R. Co.; but it has not so expressed itself in the act, and the rules of construction, to which we have referred, forbid us from supplying the language necessary to give it such effect."

Peo. vs. O'Brien, 111 N. Y., 60–61.

The following is extracted from the *second* case cited by the attorney for the government below.

" The language as it stands is clear, explicit and unequivocal. It leaves no room for interpretation, for nothing in the language employed is doubtful. *We are satisfied by considerations outside of the language, that the legislature intended to enact something very different from what it did enact.* But it did not carry out its intention. and we cannot take the will for the deed." Woodbury vs. Berry, 18 Ohio St., 462, quoting Sedgw. on Stat., etc., Law 231, and closing with this quotation: Courts "must not, even in order to give effect to what they may *suppose* to be the intention of the leglislature, put upon the provision of the statute a construction *not supported by the words*, even although the consequences should be to defeat the object of the law." Smith's Com. on Stat. Constr. sec. 714—thus italicized.

Farmers v. Oregon, 24 F. R. 407.

Where the law is clear, courts enforce it as they find it. Amy v. Watertown, 22 F. R. 418.

So we might follow with all the appellant's citations below, which we have separately examined.

V.

To present the case here as it was below presented, we may add that, after asserting that the words of sec. 50 are too clear to permit construction, the United States attorney in the next division of his brief declared the 'intent' of Congress is plain on the face of the act; that a line had been drawn between the old act of 1883 and the new *act of October 1*, 1890, "a time when the one should cease and the other begin to operate."

(1.) If the words are plain, no other 'intent' can be inferred than that which their ordinary meaning implies.

"It is not the *intention* of the legislator that constitutes the law, but the words in which he has permitted that intention to be expressed." 84 Edinb. Rev. 177-8.

Reiser v. Wm. Tell, 39 Pa. St. 144.

COCKBURN, C. J. "We must consider what the acts of Parliament actually say, and not enter into some remote speculation as to what that legislature intended." Palmer v. Thatcher, 3 Q. B. D. 353.

(2.) Naturally, all created things must have a beginning and an end; but *this very section 50*, whatever it may possibly mean, shows *Congress did not intend that the act of 1890 should supersede the duties of 1883 as to all goods at the same time.* As to goods in bond

September 30, it did not supersede the prior act until Feb. 1, 1891; as to goods placed there on and after Oct. 1, it did not supersede the 1883 duties, if the goods did not remain in bond after Oct. 6—for if withdrawn Oct. 4, they could not be in any worse position than if imported and entered that day;—and on importations of and after Oct. 6, it superseded the earlier duties on *that* day.

(3.) What has been alleged as to "the object of the *promoters* of the new tariff"—if *that* has aught to do with judicial construction—is purely speculative.

"It has been urged that the public policy requires such an imperative construction of the clause for the public security. But it is a sufficient answer to the suggestion, that no such public policy is avowed or can be inferred from the general terms of the act."

Minor v. Mech. Bk. 1 Pet. 64.

What is termed the policy of the government, with reference to any particular legislation, is a very uncertain thing, etc. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes."

Hadden v. Collr., 5 Wall. 111–2.
Munic v. Kent, 9 Ap. Cas. 273.

It is not our province to supply defective enactments by an attempt to carry out fully the purposes which may be *supposed* to have occasioned these enactments."

Swift v. Luce, 27 Me. 286 bot.
Hull v. Hull, 2 Strob. Eq. 179 bot.

"Courts cannot *imagine* an intent, and bind the letter of the act to it."

Alex. v. Worthington, 5 Md. 472.
Maxwell v. State, 40 *Id.* 293.
Frye v. R. R. 73 Ills. 403 top.
Barker v. Esty, 19 Vt. 140.

VI.

As Judge WHEELER notes, this section is not an express enactment, such as is necessary, to impose duties.

U. S. v. Isham, 17 Wall. 504, ¶ 4.
U. S. v. Wigglesworth, 2 Story, 373–4.
Hedden v. Iselin, 31 F. R, 269 top.

VII.

Judge WHEELER's remark that the earlier tariff was not repealed to expire when this Act was passed (Oct. 1) or its duties to accrue upon unexcepted importations (Oct. 6) is shown correct by this very section, which recognizes the act of 1883 as applicable to some specified merchandise up to Feb. 1, 1891.

VIII.

As tending to show the present decision to be but a repetition of the theory of construction overruled in Robertson v. Bradbury, 132 U. S. 491 (see 34 Fed. Rep. 203), we may add that the government brief below, in criticising Judge WHEELER's application of Hartranft v. Oliver (125 U. S. 525), assumed and expressly declared that "the Act of March 3, 1883, went into effect *upon the first day of July*" of that year—notwithstanding the aforesaid decision of this Court to the contrary. That question was neither raised nor involved in the Hartranft case; it was only incidentally,

as to its duties, that act is mentioned as going into effect July 1; but, when presented in the Robertson case (132 U. S. 493), the Supreme Court held that the Act of 1883 went into effect March 3, 1883, and *not* on the date now (as then) claimed by the government, except as to such provisions to which that date was *expressly* assigned—of which Sec. 10 was not one.

As sec. 10, act of 1883, contained no express provision giving it any postponed effect, so was no such postponement necessary;—for (as Judge WHEELER says of sec. 50, act of 1890) this tenth section did not impose any duty. It related only to goods *in gremio legis* when the act took effect—and it was no matter, so far as this section went, when that was—putting these goods on equality with subsequent importations. Merchandise imported or withdrawn from public custody, on March 4 or June 30, 1883, paid the same duty;—that imposed by the revision; and, whether imported or withdrawn, July 1, they paid the duty imposed by the act of March 3, 1883;—this is all section ten declares. The act of March 3, 1883, expressly said that the new Title it contained should not become a substitute for that in the revision until July 1, 1883; up to which date the old Title XXXIII prevailed; it said after that date, the specified rates should be paid upon all articles *imported*, etc.; then this tenth section (not part of the Title) said goods in public store should, at their withdrawal, pay the duty which would, on that day, be levied upon a similar importation; if the latter paid the old rate, so would the former; if imports were of a date subjecting them to the new rate, withdrawals of that date paid the same. That is all.

The government argument is;--The act of 1883, § 10, took effect July 1, 1883; hence, the similar language of sec. 50, act of 1890, must take effect Oct. 6, 1890.

Now, when I produce a Supreme Court decision that this postulate, as to the act of 1883, is erroneous, the

argument fails; and I have the right to assert its converse.

The erroneous conclusion must fall with the false premise.

IX.

When a court is called upon to construe a tax-law, the task must be undertaken with a mind inclined in favor of the citizen, and construing every phrase most favorably to him and adversely to the government.

Gurr v. Scudds, 11 Exch. 191.

The legislator "lays his work before a public *who are entitled each to interpret it in his own favor;* and to found upon *any* reading that supports his own views, whether it be in conformity with the intention with which the measure was prepared or not." 84 Edb., Rev. 118.

X.

If, in taking the language of the statute throughout, in that sense most favorable to the citizen, a doubt as to its meaning still lingers in the judicial mind, that doubt turns the scale in favor of the tax-payer;—since "*duties are never imposed upon the citizens upon doubtful interpretations.*"

Adams v. Bancroft, 3 Sumn. 387.
U. S. v. Wigglesworth, 2 Story, 373.
Powers v. Barney, 5 Blatch. 203.
U. S. v. Isham, 17 Wall. 504.
Hartranft v. Weigmann, 121 U. S. 616.
Ross v. Barland, 1 Pet. 667.
Vicksb. v. State, 62 Miss. 107.
Hedden v. Iselin, 31 F. R. 269 top.

An eminent English judge observes that the same word should be assigned different meanings, accordingly as the effect will be to exact, or exempt from, a tax;—

BLACKBURN, J. "But then, in the one case the words are used in a statute imposing a duty for the purpose of raising a revenue, etc. In the other case, the words are used, for exempting and saving from duty all agreements that were made for the purpose of effecting sales. The object of the one statute was to promote commerce; and it is said, therefore, that agreements for the sale of goods should not be fettered or hampered by the imposition of any duty of this kind. (citing case.) . . . In the one case, therefore, the exemption should be liberally construed." . . .

He concludes;—"The same words might mean a very different thing when put in to impose a tax, from what they would mean when exempting from a tax."

LUSH, J. "I am of the same opinion."

Rein v. Lane, L. R. 2 Q. B. 150–1.

XI.

If, then, two constructions of sec. 50 were possible, that ought to be selected most favorable to us, that the rule just above referred to may be recognized as of uniform application, since

"Uncertainty and ambiguity are the bane of commerce." Merritt v. Welsh, 104 U. S. 702 top.

But "construction should be reserved for doubtful language" (Clay v. Erhardt, 48 F. R. 294), and the language of section 50 is plain and explicit.

It cannot be contended that the phraseology adopted was the clearest and most appropriate that could have been selected, had the design been such as the govern-

ment now claims; when the date, Oct. 6, could have been so easily employed, if meant. It

"assumes that the legislature adopted a form of expression quite inappropriate to convey their real meaning, while the subject was unembarrassed by any difficulty in selecting words which would express their intent explicitly and clearly."

Leoni v. Taylor, 20 Mich. 154.

XII.

The argument of the opinion of the U. S. Circuit Court of Appeals is precisely that by which it was maintained (34 Fed. Rep. 203) that sec. 7 of the act of 1883 went into effect July 1, 1883.

Decisions are numerous and uniform that the phrase "when this act shall take (or go into) effect" is the precise equivalent of the term "on the day of the *passage* of this act," where there is no postponement of the date when *the act itself* shall go into effect at a date later than that of its approval.

Wartman v. Phila. 33 Pa. St. 208.
Maize v. State, 4 Ind. 348.

We have already noted that, where the language is plain, any effort to ascertain the public policy which led to its selection is liable to lead to error. In construing the act of 1883, the learned judge gave as a reason for deferring the effect of its seventh section to July 1, that it related to duties, and the duty provisions then became effective. (34 F. R. 204.) Precisely the same fallacious reasoning is followed in the present opinion. The 52nd section, act of 1890, as to the *immediate* proclamation of the value of foreign coins, im-

mensely affects duties, as the franc, and florin, and other such cases abundantly show.

The 'analysis' of the opinion can equally as well be applied to the equally unambiguous assignment of Feb. 1, 1891, as a date of withdrawal, by this same section. These rates are thereby applicable to goods;—

(1) Imported Sept. 30th, withdrawn Jan 31st.	The old rate.
(2) Imported Oct. 1st, withdrawn Jan. 31st.	The new rate.
(3) Imported Sept. 30th, withdrawn Feb. 1st.	The new rate.
(4) Imported Oct. 1st, withdrawn Oct. 4th.	The old rate.

Demonstrably, this fiftieth section did not prescribe, nor refer to, any one fixed date for the dutying of goods. It did *not* relate primarily to duties, *but to the privilege of storage and withdrawal,* and this with relation to *Oct. 1* and Feb. 1 as the statutory limitations of this privilege.

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